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Attorneys for Plaintiff,
JOSHUA MARTINEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JOSHUA MARTINEZ, in his
representative capacity only, and on
behalf of other aggrieved employees
pursuant to California's Private
Attorneys General Act,

Plaintiff,

v.

CAREONSITE, INC., a corporation; and
DOES 1 through 10 inclusive,

Defendants.

CASE NO.: 24STCV09662

**PLAINTIFF'S FIRST AMENDED
COMPLAINT FOR VIOLATIONS OF
CALIFORNIA LABOR CODE
SECTION 2698 ET SEQ. - THE
PRIVATE ATTORNEYS GENERAL
ACT OF 2004**

**[FILED PURSUANT TO CCP § 472 &
LABOR CODE § 2699.3(a)(2)(C)]**

FILED
Superior Court of California
County of Los Angeles

08/15/2024

David W. Slayton, Executive Officer / Clerk of Court

By: R. Lozano Deputy

1 Plaintiff Joshua Martinez (“Plaintiff”), in his representative capacity only, and on
2 behalf of other aggrieved employees pursuant to California’s Private Attorneys General
3 Act, alleges as follows on knowledge as to his own acts/interactions and on information
4 and belief as to all other matters:

5 **JURISDICTION AND VENUE**

6 1. This Court has personal jurisdiction over Defendant because it conducts
7 business in the State of California.

8 2. Under California Code of Civil Procedure section 395(a), venue is proper in
9 this County because Defendant does business in this County and the harm to Plaintiff
10 occurred in this County.

11 **EXHAUSTION OF ADMINISTRATIVE REQUIREMENTS**

12 3. On April 16, 2024, counsel for Plaintiff prepared and electronically
13 submitted a letter to the California Labor & Workforce Development Agency (“LWDA”)
14 via the California Department of Industrial Relations’ “PAGA Filing” website. A copy
15 of the letter was mailed to Defendant, also via USPS Certified Mail. The letter contained
16 the specific provisions of the California Labor Code violated by Defendant, as well as the
17 facts and theories in support of Plaintiff’s claims.

18 4. Now that sixty-five (65) days have passed since Plaintiff notified
19 Defendants of these violations, the statutory time period for the LWDA to investigate
20 and/or respond, and for the employer to respond, has concluded. Plaintiff has exhausted
21 the administrative requirements for bringing a claim under the PAGA for these
22 violations.

23 **PARTIES**

24 5. Plaintiff, at all times relevant hereto, was and is a resident of the State of
25 California.

26 6. Plaintiff is informed and believes that Defendant CAREONSITE, INC.
27 (“Defendant”) is a corporation organized and existing under the laws of California with
28

1 its principal place of business located at 20300 S Vermont Ave., Suite 265, Torrance,
2 California 90502.

3 7. The true names and capacities of the defendants named herein as Does 1
4 through 10, inclusive, whether individual, corporate, associate or otherwise, are unknown
5 to Plaintiff who therefore sues such defendants by fictitious names pursuant to California
6 Code of Civil Procedure section 474. Plaintiff is informed and believes that all of the
7 Doe defendants are California residents. Plaintiff will amend this Complaint to show
8 such true names and capacities when they have been determined.

9 8. Plaintiff is informed and believes that at all times relevant herein, each
10 defendant designated, including Does 1 through 10, was the agent, managing agent,
11 principal, owner, partner, joint venturer, representative, manager, servant, employee
12 and/or co-conspirator of each of the other defendants, and was at all times mentioned
13 herein acting within the course and scope of said agency and employment, and that all
14 acts or omissions alleged herein were duly committed with the ratification, knowledge,
15 permission, encouragement, authorization and consent of each defendant designated
16 herein.

17 **FACTUAL ALLEGATIONS**

18 9. Defendant provides occupational health services for various companies,
19 including by providing first aide and medical care to individual injured on the job.

20 10. Starting in approximately October of 2022 through approximately February
21 9, 2024, Plaintiff was employed by Defendant as a non-exempt employee.

22 11. Plaintiff worked for Defendant in the position of Occupational Health
23 Technician.

24 12. Plaintiff worked at various worksites as instructed by Defendant, including
25 at a refinery operated by Hader Mechanical in Paramount and the Intuit Dome in Los
26 Angeles.

1 13. Plaintiff and other aggrieved employees working for Defendant were not
2 compensated for all time worked, Defendant failed to accurately keep track of their time,
3 had their time entries altered/decreased by Defendant, had their time rounded, were
4 required to work “off the clock,” were not paid for mandatory trainings, and not paid for
5 reporting time pay.

6 14. Plaintiff and other aggrieved employees working for Defendant were also
7 not compensated for mandatory security screenings, including bag checks, that were
8 required prior to clocking in.

9 15. Plaintiff and other aggrieved employees working for Defendant were also
10 not compensated for the time they spent using mandatory transportation (a bus) that
11 picked up employees from a specific parking lot and drove them to the job site.

12 16. Further, Defendants failed to pay Plaintiff and other aggrieved employees
13 all wages due to them within any time period specified by Labor Code § 204, including
14 earned and unpaid minimum wages, overtime wages, and wages in the form of penalties
15 for non-complaint meal and rest periods.

16 17. Plaintiff and other aggrieved employees are entitled to liquidated damages
17 equal to unlawfully unpaid minimum wages with interest pursuant to Labor Code §
18 1194.2.

19 18. Due to these and other issues, Plaintiff and other aggrieved employees were
20 also not compensated appropriately for overtime wages and double overtime wages.
21 Plaintiff and other employees worked overtime during their employment with Defendant
22 by working over eight (8) hours in a workday and/or forty (40) hours in a workweek.

23 19. Plaintiff and other aggrieved employees were also not compensated for all
24 hours worked and were not compensated at the appropriate overtime rate, which resulted
25 in underpayments of overtime wages and double overtime wages.

26 20. Plaintiff and other aggrieved employees working for Defendant were forced
27 to miss taking compliant meal periods (30-minute meal periods after the first five hours
28

1 worked). Moreover, Plaintiff and other aggrieved employees were deprived of taking a
2 second meal period after ten hours worked. Plaintiff and other aggrieved employees
3 working for Defendant were denied compliant meal periods based on Defendant's failure
4 to implement an adequate relief system by which employees could receive work-free
5 meal periods.

6 21. Plaintiff and other aggrieved employees worked at least 3.5 hours or more
7 and were entitled to a 10-minute paid rest break for every 3.5 hours of continuous work.
8 Defendant knew or should have known that Plaintiff and other aggrieved employees
9 worked 3.5 hours or more on any given day.

10 22. During Plaintiff's employment by Defendant, Plaintiff and other aggrieved
11 employees working for Defendants were forced to miss taking compliant rest periods (ten
12 minutes rest time per four hours worked) due to the demands placed on them by
13 Defendants and lack of coverage.

14 23. Defendants failed to pay penalties for noncompliant rest and meal periods
15 (premium pay as required by Labor Code § 226.7(b) and Sections 11 and 12 of the
16 applicable Wage Order in lieu of meal and/or rest periods).

17 24. Plaintiff and other aggrieved employees were all denied compliant meal
18 and rest periods based on Defendant's policy that employees could not leave the facility
19 during their meal or rest periods. Plaintiff and other aggrieved employees were informed
20 that they had to remain on the premises during their meal or rest periods. Defendant's
21 policy violates the California Supreme Court's ruling in Augustus v. ABM Security
22 Svcs., Inc., 2 Cal. 5th 257 (2016), which requires employers to "relinquish any control"
23 over employees during meal and rest periods.

24 25. Plaintiff and other aggrieved employees were all denied compliant meal
25 and rest periods based on Defendant's policy that they must remain on-call at all times to
26 respond to emergencies, such as workplace injuries.

1 26. Upon Plaintiff's termination of employment, Plaintiff was not paid all
2 wages owed, including minimum wages, overtime wages, and missing meal/rest period
3 premiums. Plaintiff is informed and believes that Defendant similarly failed to pay other
4 aggrieved employees all wages owed upon termination or resignation of employment in
5 compliance with California law. In doing so, Defendant violated and continues to violate
6 California Labor Code sections 201-203 (failure to pay all wages upon termination or
7 resignation).

8 27. In addition, Defendant did not provide Plaintiff and other aggrieved
9 employees with accurate wage statements as required under California law. More
10 specifically, the wage statements provided to Plaintiff and other employees did not reflect
11 or did not accurately reflect the: (1) gross wages earned, (2) total hours worked by the
12 employee, (3) net wages earned, and (4) all applicable hourly rates in effect during the
13 pay period and the corresponding number of hours worked at each hourly rate by the
14 employee. Accordingly, Plaintiff and other aggrieved employees were not able to
15 promptly and easily determine the missing information without reference to other
16 documents or information.

17 28. The wage statements also did not provide accurate information by
18 understating the lack of meal/rest break premium pay that should have been paid to
19 Plaintiff and other aggrieved employees . Naranjo v. Spectrum Sec. Servs., Inc., 13 Cal.
20 5th 93 (2022) (Because premium pay for missed meal and rest breaks under Lab. Code, §
21 226.7, compensated employees for the work performed during a break period and
22 therefore constituted wages within the meaning of Lab. Code, §§ 200, subd. (a), 203, 226,
23 penalties could be available for an employer's alleged failure to timely pay or report such
24 payments.).

25 29. Plaintiff and other aggrieved employees were not able to promptly and
26 easily determine the missing information without reference to other documents or
27 information.
28

30. Plaintiff and other aggrieved employees were not reimbursed for all business expenses and, to the extent such reimbursement was provided, it was provided in an amount not sufficient to reimburse Plaintiff and other employees for such expenses, including use of their personal mobile phones and data plans, which were required to perform their duties (including clocking in and out via an application and speaking to managers). See Cochran v. Schwan's Home Service, Inc., 228 Cal. App. 4th 1137 (2014) (Lab. Code, § 2802, requires an employer to reimburse an employee for the reasonable expense of the mandatory use of a personal cell phone, regardless of the details of the employee's cell phone plan, whether the phone bill is paid for by a third person or at all, and whether the employee changed plans to accommodate worked-related cell phone usage; to show liability under § 2802, an employee need only show that he or she was required to use a personal cell phone to make work-related calls, and that he or she was not reimbursed).

31. Defendants violated California Labor Code §§ 1174, 1174.5 by failing to keep at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to employees employed at the respective plants or establishments.

FIRST CAUSE OF ACTION

**PRIVATE ATTORNEYS GENERAL ACT OF 2004, LABOR CODE SECTION
2698 ET SEQ.**

**(REPRESENTATIVE ACTION BY PLAINTIFF AND AGGRIEVED
EMPLOYEES AGAINST DEFENDANT)**

32. Plaintiff incorporates by this reference all preceding and subsequent paragraphs.

33. Plaintiff seeks penalties pursuant to PAGA for based on Defendant's following violation of the California Labor Code:

- a. Underpayment and late of minimum wages and hourly wages in violation of California Labor Code §§ 204, 1194, 1194.2, 1197, IWC Wage Order, California Minimum Wage Order.
- b. Underpayment of overtime wages in violation of California Labor Code §§ 510, 1194, 1198, and IWC Wage Order.
- c. Failure to provide compliant meal periods in violation of California Labor Code §§ 226.7, 512, 558, and IWC Wage Order.
- d. Failure to provide compliant rest periods in violation of California Labor Code §§ 226.7, 512, 558, and IWC Wage Order.
- e. Failure to reimburse business expenses in violation of California Labor Code 2802 and IWC Wage Order.
- f. Non-compliant wage statements in violation of California Labor Code § 226(a).
- g. Failure to pay all wages upon resignation or termination due to the underpayment of wages and/or overtime in violation of California Labor Code §§ 201-203.
- h. Failure to pay, appropriately accrue, and forfeiture of paid time off in violation of California Labor Code § 227.3.
- i. Failure to keep payroll records showing total hours worked and wages paid in violation of California Labor Code §§ 1174-1174.5 and IWC Wage Order.

34. Plaintiff seeks civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof, pursuant to the California Labor Code, including California Labor Code §§ 2699(a) and 2699(f), which provides for \$100 for each initial violation and \$200 for each subsequent violation per employee pay period.

35. Plaintiff was compelled to retain the services of counsel to file this action to protect Plaintiff's interests and the interests of other similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendant. Plaintiff has thereby incurred

attorneys' fees and costs, which Plaintiff is entitled to recover under California Labor Code § 2699(g).

PRAYER FOR RELIEF

36. WHEREFORE, Plaintiff respectfully requests the Court grant Plaintiff and other aggrieved employees following relief against Defendant:

- a. Civil penalties due to Plaintiffs, other aggrieved employees, and the State of California according to proof, pursuant to the California Labor Code, including California Labor Code §§ 2699(a) and 2699(f), which provides for \$100 for each initial violation and \$200 for each subsequent violation per employee pay period;
- b. For attorneys' fees where allowed by law, including under California Labor Code § 2699(g);
- c. For an award of pre-judgment and post-judgment interest where allowed by law, including California Labor Code § 218.6;
- d. For costs of suit incurred herein; and
- e. For such other and further relief as this Court deems just and proper.

Dated: August 15, 2024

Respectfully submitted,
AZADIAN LAW GROUP, PC



By: _____
George S. Azadian
Attorneys for Plaintiff,
JOSHUA MARTINEZ

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I reside in the State of California. I am over the age of 18. My business address is 707 Foothill Blvd., Suite 200, La Cañada, California 91011.

On August 15, 2024, I served the foregoing documents described as:

**PLAINTIFF'S FIRST AMENDED COMPLAINT FOR VIOLATIONS OF
CALIFORNIA LABOR CODE SECTION 2698 ET SEQ. - THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004**

on all interested parties in this action as follows:

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

Ann K. Smith State Bar No. 150104

Sarkis A. Atoyan

12800 Center Court Drive South, Suite 300

Cerritos, California 90703-9364

ASmith@aalrr.com

Sarkis.Atoyan@aalrr.com

xxxx **BY EMAIL:** I caused a copy of the documents to be sent from email address George@azadianlawgroup.com to the persons at the email address listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful

xxxx **(STATE):** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 15, 2024, at La Cañada, California.



CAMILLE L. BANKS